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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY J. APODACA,

Defendant and Appellant.

B216871

(Los Angeles County  
Super. Ct. No. KA082772-01)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Wade Olson, Judge. Affirmed.

Joseph S. Klapach, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Defendant Anthony J. Apodaca appeals from the order revoking his probation. Following our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, 441 (*Wende*), we affirm.

In a felony complaint filed April 14, 2008, defendant was charged with felony vandalism. (Pen. Code, § 594, sub. (a).) He pled not guilty but subsequently pled no contest. He was sentenced to 365 days at Millennium House, a residential treatment facility, and 5 years probation. The trial court ordered defendant to stay away from the home of the victim (defendant's mother) and her children.

On October 22, 2008, the trial court revoked defendant's probation and issued a bench warrant. Defendant appeared on October 27, 2008, at which time the trial court granted his motion to be conditionally released to a representative of Millennium House. Following a hearing on the morning of November 7, 2008, the trial court reinstated defendant's probation, finding him not in violation. But that afternoon, the trial court revoked defendant's probation and reissued the bench warrant after learning that defendant had absconded from his Millennium House escort in the court house parking lot. On December 16, 2008, after defendant admitted the violation, the trial court reinstated probation on the same terms and conditions as before.

On January 2, 2009, after defendant left Millennium House and violated the stay away order, the trial court revoked his probation once again and issued a bench warrant.

On March 6, 2009, defense counsel declared a doubt as to defendant's mental competence. At the Penal Code section 1368 hearing on May 13, 2009, both sides submitted on the Evidence Code section 730 report. The trial court found defendant presently mentally competent to stand trial.

At the probation revocation hearing on May 29, 2009, a Millennium House case manager testified that defendant left the program on November 6, 2008; they accepted him back in December 2008, but defendant left three days later; defendant was not accepted back again. Defendant's mother testified that defendant came to her home at 2:30 a.m., after he left Millennium House in December; he came back a few days later.

The trial court found defendant in violation of probation and sentenced him to 16 months in prison. Defendant filed a timely notice of appeal.

We appointed counsel to represent appellant on this appeal. After examination of the record, appointed counsel filed an opening brief which contained an acknowledgment that he had been unable to find any arguable issues and requesting that we independently review the record pursuant to *Wende, supra*, 25 Cal.3d 436. On January 4, 2010, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. On February 8, 2010, defendant filed a written response consisting of a cover letter, “Declaration in Support of Motion to Correct Invalid Case# & Provide Copy of Search Warrant,” and “Appellant’s Opening Brief.” In the cover letter, defendant requests that this court “order [appointed counsel] to file the correct argument in this case, or alternatively, [to] appoint new counsel.” In the declaration, defendant states that he has made several Freedom of Information Act requests for a search warrant application but received no such document, leading him to conclude that a police officer falsely testified that a search warrant issued. The gist of the Opening Brief, which refers to a 1982 conviction for violations of Health and Safety Code sections 11278.5 and 11379.5, is that trial court erred in failing to provide him with a copy of the search warrant in that case.

We have examined the entire record and are satisfied that appointed counsel has fully complied with his responsibilities and that no arguable issues exist. (*Wende, supra*, 25 Cal.3d at p. 441.)

## **DISPOSITION**

The order revoking defendant's probation is affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

LICHTMAN, J.<sup>\*</sup>

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<sup>\*</sup> Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.